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ATTORNEYS FOR DEFENDANTS

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA  
BILLINGS DIVISION

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MOUNTAIN WEST HOLDING	)	
CO., INC.,	)	Cause No. CV-13-49-BLG
	)	
Plaintiff,	)	
	)	
v.	)	ANSWER TO
	)	SECOND AMENDED
STATE OF MONTANA;	)	COMPLAINT
MONTANA DEPARTMENT OF	)	
TRANSPORTATION,	)	
	)	
Defendants.	)	

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Defendants answer to the Second Amended Complaint would be due if not for Defendants' pending Rule 60 motion for reconsideration of the Court's order allowing amendment of the complaint. Defendants are uncertain of the status of the Second Amended Complaint, given the pending Rule 60 motion. Consequently, to ensure that Defendants are not defaulted

for failing to answer the Second Amended Complaint, Defendants submit this Answer. Defendants retain and do not waive their objection to Plaintiff's motion to amend the complaint.

Defendants answer the Second Amended Complaint as follows:

- 1.1 Defendants are without sufficient information to form a belief as to the truthfulness of the allegations, therefore they are denied.
- 1.2 Admit.
- 1.3 Admit.
- 2.1 Defendants are without sufficient information to form a belief as to the truthfulness of the allegations, therefore they are denied.
- 2.2 The allegation states a legal conclusion to which no response is necessary. To the extent that there are allegations of fact, they are denied.
- 2.3 The allegation states a legal conclusion to which no response is necessary. To the extent that there are allegations of fact, they are denied.

- 2.4 The allegation states a legal conclusion to which no response is necessary. To the extent that there are allegations of fact, they are denied.
  - 2.5 The allegation states a legal conclusion to which no response is necessary. To the extent that there are allegations of fact, they are denied.
- 3.1 The allegation states a legal conclusion to which no response is necessary. To the extent that there are allegations of fact, they are denied.
- 4.1 Admit.
  - 4.2 Defendants are without sufficient information to form a belief as to the truthfulness of the allegations, therefore they are denied.
  - 4.3 Defendants are without sufficient information to form a belief as to the truthfulness of the allegations, therefore they are denied.
  - 4.4 Admit.
  - 4.5 Deny.
  - 4.6 Admit that MDT commissioned a disparity study by D.Wilson in 2009. Deny all other allegations of fact.

4.7 Deny.

4.8 Deny.

4.9 Deny.

4.10 Deny.

4.11 Deny.

4.12 Deny.

4.13 Deny.

4.14 Deny.

4.15 Admit the first sentence. Deny the second sentence.

4.16 Admit.

4.17 Admit that Table ES-2 in the D. Wilson Disparity Study

includes the information alleged in the first sentence. Deny all  
other allegations of fact.

4.18 Deny.

4.19 Deny.

4.20 Admit.

4.21 Defendants are without sufficient information to form a belief

as to the truthfulness of the allegations, therefore they are  
denied.

- 4.22 Defendants are without sufficient information to form a belief as to the truthfulness of the allegations, therefore they are denied.
- 4.23 Defendants are without sufficient information to form a belief as to the truthfulness of the allegations, therefore they are denied.
- 4.24 Defendants are without sufficient information to form a belief as to the truthfulness of the allegations, therefore they are denied.
- 4.25 Defendants are without sufficient information to form a belief as to the truthfulness of the allegations, therefore they are denied.
- 4.26 Defendants are without sufficient information to form a belief as to the truthfulness of the allegations, therefore they are denied.
- 4.27 Deny the first sentence. Defendants are without sufficient information to form a belief as to the truthfulness of the allegations, therefore they are denied.

4.28 Defendants are without sufficient information to form a belief as to the truthfulness of the allegations, therefore they are denied.

5.1 Deny.

5.2 Admit.

5.3 Deny.

5.4 Defendants deny any allegations of fact not specifically admitted herein.

#### AFFIRMATIVE DEFENSES

- I. The complaint fails to state a claim for which relief may be granted.
- II. The Defendants are immune from suit pursuant to the Eleventh Amendment.
- III. Plaintiff lacks standing.
- IV. Plaintiff's claims are res judicata.
- V. Plaintiff's claims are barred by estoppel.
- VI. The Plaintiff's claims of injury and damages, if any, were caused or contributed to by its own actions or the acts of third parties which bars it from seeking relief from Defendants.
- VII. Plaintiff's damages, if any, were not caused by Defendants.

VIII. Plaintiff's damages, if any, would have resulted regardless of the alleged improper actions of Defendants.

IX. Plaintiff has not suffered an injury.

X. Plaintiff has waived its claims.

XI. The claim is barred by the statute of limitations.

**APPLICABILITY OF AFFIRMATIVE DEFENSES**

At this time, Defendants are not certain as to what affirmative defenses may apply if this case proceeds to trial. Defendants expressly reserve the right to plead other affirmative defenses as discovery of the case progresses. Further, Defendants will dismiss any affirmative defense at the pretrial conference which does not appear to be reasonably supported by the facts and/or the law.

WHEREFORE, the Defendants pray that:

1. Judgment be entered in their favor;
2. Plaintiff's complaint be dismissed with prejudice;
3. Plaintiff take nothing against the Defendants, and
4. The Court award the Defendants their costs and attorney's fees.

DATED this 14<sup>th</sup> day of February, 2018.

*/s/ David L. Ohler*  
DAVID L. OHLER  
VALERIE D. WILSON  
Attorneys for Defendants



## CERTIFICATE OF SERVICE

I certify that I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system on the 14<sup>th</sup> day of February, 2018, which will send notification of said filing to the following:

Mark D. Parker	markdparker@parker-law.com
Gary Lofland	glofland@glofland.net
Casey Heitz	caseyheitz@parker-law.com

/s/ David L. Ohler